

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CHARLES COLEMAN, JOHN T. COONEY, JR.,
JAMES BODRATO, and JOHN J. CHIAFFI, in their
fiduciary capacity as Trustees for the LABORERS
LOCAL 754 HEALTH & WELFARE FUND, PENSION
FUND, SAVINGS FUND, ANNUITY FUND,
INDUSTRY ADVANCEMENT FUND, DUES
SUPPLEMENT FUND, LECET FUND, NATIONAL
HEALTH AND SAFETY FUND, NYSLPAFUND, 754
LECET FUND, TRAINING FUND and ORGANIZING
FUND; and CHARLES COLEMAN and JOHN J.
CHIAFFI, as Officers of LABORERS LOCAL UNION
754,

07-CV-9404

(Scheindlin, J.)

(Ellis, M.J.)

**ANSWER and
AFFIRMATIVE
DEFENSES**

Plaintiffs,

-against-

JV EXCAVATORS AND CONTRACTORS L.L.C.,
JOHN VETERI, JOHN VETERI, JR., and. DOE
FIDUCIARY,

Defendants.

Defendants, JV Excavators and Contractors L.L.C. and John Veteri (“Defendants”) by their attorneys Dreifuss Bonacci & Parker, LLP as and for their answer, herein alleges:

NATURE OF ACTION AND JURISDICTION

1. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint and leaves Plaintiff to its proofs.

JURISDICTION AND VENUE

2. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint and leaves Plaintiff to its proofs.

3. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint and leaves Plaintiff to its proofs.

PARTIES

4. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint and leaves Plaintiff to its proofs.

5. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint and leaves Plaintiff to its proofs.

6. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint and leaves Plaintiff to its proofs.

7. Defendant admits that it is a for-profit foreign corporation

8. Defendants neither admit nor deny the allegations contained in Paragraph 8 of the Complaint in that it calls for a legal conclusion

9. Defendants neither admit nor deny the allegations contained in Paragraph 9 of the Complaint in that it calls for a legal conclusion

10. Defendants neither admit nor deny the allegations contained in Paragraph 10 of the Complaint in that it calls for a legal conclusion.

PRELIMINARY STATEMENT

11. Defendants neither admit nor deny the truth of the allegations of paragraph 11 of the complaint as the same reference a writing which speaks for itself and to which the Court is respectfully referred.

12. Defendants neither admit nor deny the truth of the allegations of paragraph 12 of the complaint as the same reference a writing which speaks for itself and to which the Court is respectfully referred.

13. Defendants neither admit nor deny the truth of the allegations of paragraph 13 of the complaint as the same reference a writing which speaks for itself and to which the Court is respectfully referred.

14. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint and leaves Plaintiff to its proofs.

15. Defendants neither admit nor deny the allegations contained in Paragraph 15 of the Complaint in that it calls for a legal conclusion.

16. Defendants neither admit nor deny the allegations contained in Paragraph 16 of the Complaint in that it calls for a legal conclusion.

17. Defendants neither admit nor deny the allegations contained in Paragraph 17 of the Complaint in that it calls for a legal conclusion.

18. Defendants neither admit nor deny the allegations contained in Paragraph 18 of the Complaint in that it calls for a legal conclusion.

19. Defendants neither admit nor deny the allegations contained in Paragraph 19 of the Complaint in that it calls for a legal conclusion.

20. Defendants neither admit nor deny the allegations contained in Paragraph 20 of the Complaint in that it calls for a legal conclusion.

21. Defendants neither admit nor deny the allegations contained in Paragraph 21 of the Complaint in that it calls for a legal conclusion.

22. Defendants neither admit nor deny the allegations contained in Paragraph 22 of the Complaint in that it calls for a legal conclusion.

23. Defendants neither admit nor deny the allegations contained in Paragraph 23 of the Complaint in that it calls for a legal conclusion.

24. Defendants neither admit nor deny the allegations contained in Paragraph 24 of the Complaint in that it calls for a legal conclusion.

25. Defendants neither admit nor deny the allegations contained in Paragraph 25 of the Complaint in that it calls for a legal conclusion.

26. Defendants neither admit nor deny the allegations contained in Paragraph 26 of the Complaint in that it calls for a legal conclusion.

27. Defendants neither admit nor deny the allegations contained in Paragraph 27 of the Complaint in that it calls for a legal conclusion.

28. Defendants neither admit nor deny the allegations contained in Paragraph 28 of the Complaint in that it calls for a legal conclusion.

29. Defendants neither admit nor deny the allegations contained in Paragraph 29 of the Complaint in that it calls for a legal conclusion.

30. Defendants admit that they have made no payments since September 26, 2007.

FUND'S CLAIM FOR RELIEF AGAINST EMPLOYER - ERISA

31. Defendants repeat and reallege its responses to the allegations set forth in Paragraphs 1 through 30 hereof.

32. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 32 of the Complaint and leaves Plaintiff to its proofs.

33. Defendants neither admit nor deny the allegations contained in Paragraph 33 of the Complaint in that it calls for a legal conclusion.

34. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 34 of the Complaint and leaves Plaintiff to its proofs.

35. Defendants neither admit nor deny the allegations contained in Paragraph 35 of the Complaint in that it calls for a legal conclusion.

FUND'S CLAIM FOR RELIEF AGAINST EMPLOYER LMRA – CONTRIBUTIONS

36. Defendants repeat and reallege its responses to the allegations set forth in paragraphs 1 through 35 hereof.

37. Defendants neither admit nor deny the allegations contained in Paragraph 37 of the Complaint in that it calls for a legal conclusion.

38. Defendants neither admit nor deny the allegations contained in Paragraph 38 of the Complaint in that it calls for a legal conclusion.

FUND'S CLAIM FOR RELIEF AGAINST EMPLOYER LMRA – UNION DUES AND FEES

39. Defendants repeat and reallege its responses to the allegations set forth in paragraphs 1 through 38 hereof.

40. Defendants neither admit nor deny the allegations contained in Paragraph 40 of the Complaint in that it calls for a legal conclusion.

41. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 41 of the Complaint and leaves Plaintiff to its proofs.

42. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 42 of the Complaint and leaves Plaintiff to its proofs.

LOCAL 754 AND FUNDS' CLAIM FOR RELIEF AGAINST THE VETERIS

43. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 43 of the Complaint and leaves Plaintiff to its proofs.

44. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 44 of the Complaint and leaves Plaintiff to its proofs.

45. Defendants neither admit nor deny the allegations contained in Paragraph 45 of the Complaint in that it calls for a legal conclusion.

46. Defendants neither admit nor deny the allegations contained in Paragraph 46 of the Complaint as it calls for a legal conclusion.

47. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 47 of the Complaint and leaves Plaintiff to its proofs.

48. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 48 of the Complaint and leaves Plaintiff to its proofs.

49. Defendants neither admit nor deny the allegations contained in Paragraph 49 of the Complaint as it calls for a legal conclusion and Defendants leaves Plaintiff to their proofs.

50. Defendants neither admit nor deny the allegations contained in Paragraph 50 of the Complaint as it calls for a legal conclusion and Defendants leaves Plaintiff to their proofs.

LOCAL 754 AND FUNDS' CLAIM FOR RELIEF AGAINST DOE FIDUCIARY

51. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51 of the Complaint and leaves Plaintiff to their proofs.

52. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 52 of the Complaint and leaves Plaintiff to its proofs.

53. Defendants neither admit nor deny the allegations contained in Paragraph 53 of the Complaint as it calls for a legal conclusion and leaves Plaintiff to their proofs.

54. Defendants neither admit nor deny the allegations contained in Paragraph 54 of the Complaint as it calls for a legal conclusion and leaves Plaintiff to their proofs.

55. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 55 of the Complaint and leaves Plaintiff to their proofs.

56. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 56 of the Complaint and leaves Plaintiff to their proofs.

57. Defendants neither admit nor deny the allegations contained in Paragraph 57 of the Complaint as it calls for a legal conclusion and Defendants leaves Plaintiff to their proofs.

58. Defendants neither admit nor deny the allegations contained in Paragraph 58 of the Complaint as it calls for a legal conclusion and Defendants leaves Plaintiff to their proofs.

LOCAL 754 AND FUNDS' PRAYER FOR INJUNCTIVE RELIEF

59. Defendants neither admit nor deny the allegations contained in Paragraph 59 of the Complaint as it calls for a legal conclusion and Defendants leaves Plaintiff to their proofs.

60. Defendants neither admit nor deny the allegations contained in Paragraph 60 of the Complaint as it calls for a legal conclusion and Defendants leaves Plaintiff to their proofs.

61. Defendants neither admit nor deny the allegations contained in Paragraph 61 of the Complaint as it calls for a legal conclusion and Defendants leaves Plaintiff to their proofs.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Plaintiffs' Complaint fails to state a claim upon which relief may be granted and therefore should be dismissed.

SECOND AFFIRMATIVE DEFENSE

The Plaintiffs' claims are barred by the Doctrine of Estoppel.

THIRD AFFIRMATIVE DEFENSE

The Plaintiffs' claims are barred by the Doctrine of Waiver.

FOURTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims are barred by the Doctrine of Laches.

FIFTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims are barred by the Doctrine of Unclean Hands.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims are barred by the Doctrine of Avoidable Consequences.

SEVENTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims are barred by the applicable Statute of Limitations.

EIGTH AFFIRMATIVE DEFENSE

Defendants reserve the right to rely upon any and all additional defenses as discovery progresses in the within litigation.

NINTH AFFIRMATIVE DEFENSE

Defendants reserve the right to rely upon any and all additional defenses available to all co-

Defendants to the above-captioned litigation.

TENTH AFFIRMATIVE DEFENSE

No actions of Defendants were the cause in fact of any damage allegedly suffered by the Plaintiff.

WHEREFORE, Defendants JV Excavators and Contractors L.L.C. and John Veteri demand judgment dismissing the Complaint, together with costs and disbursements, reasonable attorney's fees and such other and further relief as this Court deems just and proper.

Dated: February 27, 2008

DREIFUSS BONACCI & PARKER, LLP
*Attorneys for JV Excavators and Contractors L.L.C.
and John Veteri*

By: s/Paul H. Mandal
Paul H. Mandal (PM-7265)
One Penn Plaza
36th Floor
New York, NY 10119
-and-
26 Columbia Turnpike, North Entrance
Florham Park, NJ 07932
973-514-1414